Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies	)	WT Docket No. 16-421
	)	
	)	
Mobilitie, LLC Petition for Declaratory Ruling	)	

COMMENTS OF THE COLORADO COMMUNICATIONS AND UTILITY ALLIANCE, THE RAINIER COMMUNICATIONS COMMISSION, THE CITIES OF SEATTLE AND TACOMA, WASHINGTON, KING COUNTY WASHINGTON, THE JERSEY ACCESS GROUP AND THE COLORADO MUNICIPAL LEAGUE

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SUMMARY

The Colorado Communications and Utility Alliance, the Rainier Communications Commission, the Cities of Seattle and Tacoma, Washington, King County, Washington, the Jersey Access Group and the Colorado Municipal League (referred to as the "Local Governments") collectively represent the interests of local governments that are home to approximately ten million people. Our communities are truly diverse, and range from large and dense urban areas to extremely small, remote rural areas, and almost every other kind of community in between. The Local Governments provide their perspective to the Commission from both the east and west coasts, and the Rocky Mountain Region.

The Local Governments, like most of their counterparts around the country, support the deployment of broadband facilities of all kinds. We understand that deployment of small cell networks are a piece of a much larger puzzle, and local governments generally are working hard to balance the many other responsibilities they are obligated to manage with the responsibility of facilitating the deployment of small cell networks in a reasonable manner.

The information provided by these Local Governments indicates that while many local government codes may not, at present, directly address the new and unique issue of siting small cell facilities in public rights-of-way (ROW), communities *have been proactive* in addressing these deployment issues, whether it involves changing local codes, negotiating ROW license agreements and processing permit applications. To the extent that wireless companies are seeking permission to locate facilities in the ROW (and many communities are *not* yet seeing this), the regulatory process is evolving and works relatively well. Many local governments have reached out to the wireless communications industry to assist in revisions to local regulations. Some have

worked on model documents for deployment licenses and permitting that can be replicated in other communities. In many cases, the industry applicants have willingly stepped back to allow local governments to amend codes to address small cell deployment issues in a collaborative manner. These local and regional activities have been successful at bringing the parties together to gain a better understanding of each other's legitimate interests.

Our information suggests that there is no national problem calling out for a federal solution with respect to local control over the siting of small cell networks in our communities. The Local Governments believe the Commission can play a positive role as a facilitator, although it must make a commitment to treat all parties as equals, and respect the longstanding efforts of localities to promote broadband deployment. The Commission must take great care not to pursue policies that pick winners and losers. Further, the Local Governments believe that the Commission has limited legal authority to take regulatory action that limits or preempts local land use or ROW authority in connection with siting issues, and we support the arguments about the scope of that legal authority made by our national associations and other local government entities in their Comments in this Docket.

TABLE OF CONTENTS

Page

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These Comments are filed by the Colorado Communications and Utility Alliance ("CCUA"), the Rainier Communications Commission ("RCC"), the cities of Tacoma and Seattle, Washington ("Tacoma" and "Seattle"), King County, Washington ("King County"), the Jersey Access Group ("JAG") and the Colorado Municipal League ("CML") (collectively referred to as "the Local Governments"), in response to the Wireless Telecommunications Bureau's Public Notice released December 22, 2016, in the above-entitled proceeding.[1]

I. INTRODUCTION

A. Background on the Local Governments.

CCUA was formed as a Colorado non-profit corporation in 2012, and is the successor entity to the Greater Metro Telecommunications Consortium. Its members have been working

[1] *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, WT Docket No. 16-421 (WTB 2016) (Public Notice).

together since 1992[2] to protect the interests of their communities in all matters related to local telecommunications issues. The CCUA undertakes education and advocacy in areas such as telecommunications law and policy, cable franchising and regulation, zoning of wireless communications facilities, broadband network deployment, public safety communications, rights-of-way management, and operation of government access channels. The CCUA is the Colorado chapter of the National Association of Telecommunications Officers and Advisors ("NATOA") and an affiliate of the Colorado Municipal League.

RCC is an intergovernmental entity formed under Washington law, comprised of Pierce County and 9 municipalities located within Pierce County.[3] Mount Rainier is located in the eastern part of Pierce County. To the west, Pierce County includes the Port of Tacoma, and the Narrows Bridge spanning Puget Sound, connecting Pierce County residents on the Gig Harbor Peninsula. RCC jurisdictions comprise an area of approximately 1,806 square miles, and represent a population of approximately 933,000 people. The RCC has existed since 1992 as an advisory body on matters relating to telecommunication for Pierce County and most of the cities and towns in Pierce County.

The City of Seattle, Washington has approximately 652,400 inhabitants on 84 square miles. A number of Seattle's distinct neighborhoods are made up of single-family residential homes. However, much of the population is concentrated in dense urban neighborhoods made up

[2] The current members of CCUA are Adams County, Adams 12 Five Star Schools, Arapahoe County, Arvada, Aurora, Boulder, Brighton, Broomfield, Castle Pines, Castle Rock, Centennial, Cherry Hills Village, Columbine Valley, Commerce City, Dacono, Delta, Denver, Douglas County, Durango, Edgewater, Englewood, Erie, Federal Heights, Fort Collins, Frederick, Glendale, Golden, Grand Junction, Greenwood Village, Lafayette, Lakewood, Littleton, Lone Tree, Longmont, Louisville, Loveland, Montrose, Northglenn, Paonia, Parker, Sheridan, Southwest Colorado Council of Governments (SWCCOG), Thornton, Westminster, and Wheat Ridge.

[3] The members of RCC are Pierce County and the Cities of Sumner, Orting, Puyallup, Fife, DuPont, University Place, Ruston, Steilacoom and Carbonado.

of apartment buildings and condominiums in the downtown area, around the University of Washington, and in other urban centers. Seattle's median annual household income is approximately $64,129. Seattle has several lakes and borders two large bodies of water: Puget Sound on the west and Lake Washington on the east. The total water body area within Seattle is 3.42 square miles. Seattle owns its municipal electric, sewer, and water utilities. Seattle has several departments involved in the granting of permits and access to the rights-of-way that are referenced in these Comments. They include: Seattle City Light ("SCL"), Seattle Department of Transportation ("SDOT"), Seattle Public Utilities ("SPU"), the Department of Planning and Development and ("DPD") and the Department of Finance and Administrative Services ("FAS").

The City of Tacoma, Washington is located on the south end of Puget Sound, and is home to the sixth largest container port in North America. Named one of America's most livable communities, Tacoma is comprised of approximately 49 square miles and has a population of over 200,000 people.

Located on Puget Sound in Washington State, and covering 2,134 square miles, King County is nearly twice as large as the average county in the United States. With more than 2 million people, it also ranks as the 14th most populous county in the nation.

The Jersey Access Group (JAG) is a professional advisory organization that informs, educates, and recommends in the areas of technology, legislation, and regulation that shape and direct the use of multi-communication platforms for content creators and distributors on behalf of municipalities, educational institutions, and other public media facilities. JAG was formed in March of 2000, and has played a dominant role in the development of New Jersey's public,

educational, and government (PEG) television stations. As the New Jersey state chapter of NATOA and an affiliate of the New Jersey State League of Municipalities, JAG also educates and advocates on behalf of its members on broadband and communications issues related to consumer protection, broadband access and funding, public safety spectrum, public rights-of-way management and policies and local government networks.

Founded in 1923, the Colorado Municipal League ("CML") is a nonprofit, nonpartisan organization providing services and resources to assist municipal officials in managing their governments and serving the cities and towns of Colorado. CML is the leading nonpartisan resource for municipal officials in Colorado, providing high quality resources and services that empower municipal governments to sustain strong, healthy, and vibrant cities and towns. CML represents Colorado cities and towns collectively through its advocacy, membership services, training, and research efforts.

A number of member jurisdictions from each of the Local Government commenters here have provided information for these Comments, and are briefly described in Sections II and III, *infra*.

B. Concern About the PN's Underlying Premise

The Local Governments are concerned about the underlying premise of the PN, namely, that local and state government rights-of-way ("ROW") practices, wireless facilities siting regulations and fees charged for the use of the ROW play a significant and sometimes negative role in deployment of broadband facilities. In these Comments, the Local Governments will describe their own practices and experiences, which demonstrate that ROW and facilities siting

practices as well as proactive activities undertaken by local governments have been directed to facilitate the deployment of wireless facilities in the ROW.

Further, we are particularly concerned with the Commission's representation in the PN that it was summarizing "information gathered from public sources regarding new and emerging wireless technologies and services, and we discuss the progress of deploying infrastructure needed to supply such services and satisfy consumer demand.[4]" The Commission then referenced additional information about local government siting processes which first criticized local processes for delay, citing allegations in materials that do not identify a single local government by name or the specific regulations supporting the basis of the allegations.[5]

In referencing this gathering of information from public sources, the Commission failed to reference its own Intergovernmental Advisory Committee ("IAC"), which was created to facilitate communication, education and sharing of information between the Commission and State, local and Tribal governments. In 2015 and 2016, at the direction of the Commission, the IAC devoted considerable time and effort on developing a white paper addressing the very issues that are identified in the PN. Despite the fact that this IAC work is readily available on the Commission's own website,[6] the PN failed to incorporate any of its information. We hope this was an inadvertent oversight, and urge the Commission to use the IAC's work product as a foundational starting point for the issues being considered here.

[4] PN at pages 2-3.
[5] PN at pages 7-8, notes 44-49.
[6] Report on Siting Wireless Communications Facilities. https://transition.fcc.gov/statelocal/IAC-Report-Wireless-Tower-siting.pdf. Last visited, February 25, 2017.

II. DETERMINING HOW LOCAL LAND-USE REGULATIONS OR ACTIONS AFFECT WIRELESS DEPLOYMENT

A. Macro Sites

All of the Local Governments commenting here, with the exception of JAG, filed joint Comments and Reply Comments in the proceeding that the Commission has referred to as the 2014 Infrastructure Order.[7] In that Docket, the Local Governments provided specific examples of how siting for wireless facilities works in their communities. Those Comments and Reply Comments demonstrated that, for these Local Governments and the industry applicants in our communities, the process is reasonable and works well.[8] Rather than repeated those specific examples here, we refer the Commission to our Comments and Reply Comments in the 2014 Infrastructure Order Docket.

B. Small Cells/Siting in Public Rights-of-Way

1. Demand for Small Cell Sites from Providers

While some of our jurisdictions have seen a moderate demand for permits to allow the siting of small cell facilities, others have seen no interest at all. Some of our jurisdictions that have been approached by entities seeking to site small cell facilities, have taken proactive steps to facilitate a regulatory framework for this deployment, and then have never heard back from the wireless provider.

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[7] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865 (2014), erratum, 30 FCC Rcd 31 (2015), *aff'd*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015).

[8] Local Government Comments: https://www.fcc.gov/ecfs/filing/6017587248; Local Government Reply Comments: https://www.fcc.gov/ecfs/filing/6017603567.

The City of Puyallup is situated at the foot of Mount Rainier in the Puget Sound region of Washington, 10 miles east of Tacoma and approximately 35 miles south of Seattle. It has a population of approximately 36,300. Puyallup was contacted by both Mobilitie and Verizon Wireless, inquiring about the process for permitting. Because the City's then current regulations did not address small cell siting in the ROW, Puyallup took steps in 2016 to begin the process to amend its regulations in order to facilitate these applications. Specifically, the City joined a consortium of other Washington jurisdictions to work collaboratively to develop model code provisions related to small cell deployment. That consortium has had regular discussions with the various industry providers to attempt to address these issues in a proactive manner, and are developing model code provisions that will hopefully have buy in from both local governments and the industry. There has only been one small cell application filed in Puyallup (on February 27, 2017) to date.

The City of Seattle owns and operates its own electric utility, Seattle City Light ("SCL"). SCL has permitted and seen deployment of over 100 facilities completed in the past couple of years, and has in that time period, permitted applications for about 700 other sites that have not yet been constructed. Inquiries and applications have come from Verizon, Crown Castle, T-Mobile, Extenet, WAVE/Astound Broadband, Comcast, CenturyLink, AT&T, Sprint, and more recently, Mobilitie. These requests can also include associated fiber and electric installations, pole replacements and installation of new poles. In addition to permission for attachments to SCL poles, permits are required from the Seattle Department of Transportation for any work done in the ROW. Recent permitting data from Seattle's Department of Construction and Inspections shows applications at least since Spring 2015, through 2016 and into 2017. In addition to this

recent activity, it is important to note that Seattle has been working with industry to site small cell facilities since 2005 when Crown Castle began small cell installations. Seattle currently has agreements in place with Crown Castle, Verizon, Extenet, Mobilite, Zayo, and AT&T.

The City of Wheat Ridge, Colorado, is a first tier suburban community, located just west of Denver, with a population of approximately 31,360. The City was contacted by Mobilitie about its interest in deploying small cells in the ROW in the fall of 2016. The City amended its code in November 2016 to help facilitate deployment of this kind of infrastructure. The City has not heard back from Mobilitie since that time and no applications for siting small cell facilities have been received.

The City of Westminster, Colorado is located north and west of Denver, with a population of approximately 107,000. The City was approached by Mobilitie in May 2016 and Verizon in January 2017. Westminster requested additional information from Mobilitie, including more detailed information about its proposed siting locations, a copy of an agreement it said it had with the Colorado Department of Transportation granting permission to site facilities on state-owned roads located within the City, and copies of the attachment agreement it said it had with the local investor-owned utility, Public Service Company of Colorado. To date, Mobilitie has not returned with the requested information, although it has indicated that it in fact does not have an agreement with Public Service Company to attach to the utility company's light poles. As discussed in more detail below, a concern of both local government and the wireless industry are utility company pole owners that will not permit small cell facility attachments.

The City of Arvada, Colorado is located on the northwest side of Denver, and is home to approximately 115,000 people. Arvada has comprehensive code provisions about siting wireless

facilities, but the code did not specifically address small cells in the ROW. The City began the process to amend its code in late 2015 and completed it in July 2016. In May 2016 it met with Mobilitie and was presented general information about plans to locate facilities in the ROW. The City followed that meeting up with a letter asking follow up questions. The City received some partial answers from Mobilitie shortly thereafter, but Mobilitie has made no further contact with the City about siting small cell facilities in Arvada. In early 2017 Arvada received preliminary communications from Verizon about siting small cell facilities in the ROW and looks forward to engaging in that process with Verizon, beginning with a meeting scheduled for March 9th.

The Town of Bayfield is located in southwestern Colorado, not far from the Four Corners of Colorado, New Mexico, Arizona, and Utah. The Town sits at an elevation of about 6900 feet, is home to approximately 2300 residents and acts as the commercial and cultural center for eastern La Plata County. Bayfield prides itself on its small town atmosphere and long-standing sense of community. Bayfield's experience demonstrates that there are far more important factors to the industry than the local regulatory process and the fees charged, when deployment decisions are made. In fact, Bayfield is an example of how industry deployment is leaving rural America behind, regardless of the local regulatory framework. Bayfield has had no contact from any entity seeking to deploy small cell facilities.

The City of Thornton, Colorado is the largest suburban community due north and east of Denver, with a population of approximately 134,000, and a large amount of undeveloped land that will accommodate significant future growth. In the past year, Thornton has been approached by Mobilitie and Verizon about the possibility of siting small cell facilities in the ROW. Thornton's land use and ROW regulations do not precisely cover these kinds of facilities, so the City has

begun the process to review and draft amendments to its code to facilitate deployment of small cells, with a goal of having the new provisions in place by late Spring.

Located on the south side of the Denver metro area, the City of Lone Tree is home to approximately 13,500 people, and has a focus on regional transportation investments, including the extension of light rail transit, which helps the City achieve a more efficient multimodal network. Its proximity to Interstate 25 and Colorado Highway 470 (the metro area beltway) puts Lone Tree at the center of significant commerce. Like many of its neighbors, Lone Tree's regulations do not specifically address small cell facilities in ROW. Lone Tree was contacted by Mobilitie in July 2016 and Verizon in December 2016 about the possibility of deploying small cell facilities in the City. Lone Tree plans to utilize the updated CCUA model agreement, as well as collaborate with its south metro area neighbors to assist in the timely deployment of small cell facilities in the ROW.[9]

Tacoma, Washington is a community of approximately 200,000 people situated on the Puget Sound in the Pacific Northwest. It has been contacted by four companies about siting small cell facilities over the past year – Extenet in March 2016, Mobilitie and Verizon in August 2016, and Crown Castle in January 2017. The City does have code provisions that provide a process for negotiating access to the ROW for these facilities, and it has been in negotiations with each company since being contacted about deployment options.

Aurora is Colorado's third largest city, covering an area over 150 square miles, with a diverse population of more than 351,000. In 2016 it was contacted first by Mobilitie and then by

[9] *See*, Section III A, *infra*.

Verizon, about siting of small cell facilities in the ROW. Active negotiations with both entities have been underway for the past few months. Aurora is close to completion of a master license agreement with Mobilitie, which will provide a streamlined process for individual site licenses for each individual ROW site requested. Similar negotiations with Verizon are expected to be completed within the next two to three months, and will follow a similar framework, providing a process for obtaining individual site licenses on any site that is being sought for deployment, subject to local code requirements governing matters like building and safety codes, and consistency with zoning district height limitations.

King County, Washington was approached by Mobilitie and Verizon in 2016. The County's regulations are already technology agnostic, addressing all wireless operations including satellite and microwave. Recent regulatory amendments work well for the County, and create a framework for addressing small cell technology as well as other wireless technology. There has not been much forward movement on the inquiries from these two companies in King County, in part due to other pressing obligations of the County's limited staff, but more directly due to the companies' lack of communication on a desire to move forward. When an applicant is ready to move forward in King County, the County will be ready to proceed.

Lafayette, Colorado is a suburban community in Boulder County with a population of approximately 27,000. Interestingly, Lafayette notes that when it was requested to permit wireless antenna attachments in the ROW in 2001 and 2003 from companies known as Metricom and Ricochet, it did so easily and timely. Both companies went bankrupt, leaving shoebox size

attachments abandoned on poles throughout the City.[10] Despite its status as a thriving suburban community in a very high-tech county, no entity has approached Lafayette in the recent past, seeking to place small cell facilities in the ROW.

These examples demonstrate that in the majority of cases, the interest by the industry in siting small cell facilities in the ROW is relatively new. Many communities do not have code provisions in place in which these kinds of facilities cleanly fit. However, as described here and below in Section III, these same local governments are working proactively to modify local regulations to address small cell siting issues in a reasonable manner.

2. Local Framework for Processing Applications

i. Fees. Permit fees in each of the Local Government jurisdictions are intended to address cost recovery. State law in Washington, New Jersey and Colorado does not allow for franchise fees or similar compensation for permission to use the ROW for this kind of deployment, although a site-specific charge or an attachment fee to municipal infrastructure may be permitted. In Seattle, there are approximately 110,000 utility poles owned in whole or in part by the City, which are available for attachment for wireless siting. Seattle City Light, which has jurisdiction over the poles, charges a $300 application fee per site for time and materials, and $1,800 annually per site, which is the fair market value of the utility's vertical real estate. For poles in the City's ROW, Seattle's Department of Transportation also requires a street use permit, and charges a nominal issuance fee of $209.

[10] Metricom and Ricochet had similar deployments and similar abandonment of facilities widely throughout metro Denver at that time. Some of the abandoned equipment exists even today.

In Wheat Ridge, the City maintains a building permit fee schedule, and wireless providers follow the same schedule as other kinds of structures and attachments. When special use permits are required (for example, for freestanding towers) there is a $200 application fee and a site plan fees of $200. In Tacoma, a refundable application fee of $5,000 is collected at the time the application is submitted to the City. The application fee is to recover the cost of the Tacoma employee time spent for reviewing, researching, presenting, and processing the application. Any funds remaining are returned to the provider upon completion of the application process. In Grand Junction, Colorado, permit fees are also tied directly to its costs incurred in addressing the application. It is considering a Mobilitie proposal to additionally pay a fee of $200 per pole, per year for its small cell sites. Thornton currently charges a $250 inspection fee and is exploring the most efficient way to identify other city costs in the process and will update their fee schedule going forward. Many of these Local Governments, like Thornton, are examining their fees in the same manner they are examination their review and approval processes, in order to make appropriate adjustments in order to limit the fees charged to recovery of the Local Governments' actual costs in addressing these permits.

ii. Timing. Many of the Local Governments are still in the process of completing a master license or similar agreement with the entities that have approached them and expressed a serious interest in deploying small cells in the ROW. Once these agreements are complete, it is expected that individual site applications will take no longer than a few weeks. Seattle's Department of Construction and Inspections has reviewed approximately 43 applications (of which 7 are pending) for facilities on SCL utility poles in the last 2.5 years. The average time for review and approval for wireless attachments to poles in the City of Seattle ROW is two

months.

iii. Specific Local Government Experiences. The experiences of these Local Governments seem to fall into one of two categories. The first is those few jurisdictions that have code provisions specifically addressing small cell siting and that have worked with the industry to site these facilities for a number of years. Most of the Local Government jurisdictions however, find themselves working sometimes independently and sometimes in collaboration with wireless providers, to enter into master agreements that will create a framework for future siting activity. These experiences, in places like Aurora and Grand Junction, are basically working well. There are admittedly times where the City may take a few weeks more than expected to address the next steps in negotiations, and other times where the provider takes a few weeks more to respond. These gaps are indicative of parties that are busy with multiple obligations, and do not demonstrate an intent by either party to delay activities that will lead to a final agreement. In almost all of these cases, no siting application has formally been made, so there is no shot clock requiring a decision in a specified time. Rather, the parties are taking the time necessary to put the right kind of foundation in place for effective deployment activities in the future.

Seattle's interaction with small cell companies has varied. Mobilitie met with Seattle representatives for several months before it finally submitted a term permit application. The City facilitated meetings with Mobilitie several times to speak with a changing list of Mobilitie contacts, and repeatedly explained the application and permit process. Crown Castle submitted an application on January 28, 2017. The City has also been meeting with Comcast, Verizon and CenturyLink on their system upgrade work that may include small cell technology. Seattle meets with Verizon weekly, and Comcast and CenturyLink as requested.

Tacoma reports that it has experienced multiple providers failing to supply proper information on their applications, resulting in a delay in the review and acceptance process. The City's requests for and ultimate receipt of the proper information has been pursued by the applicants on a piecemeal basis over the course of a number of months. Mobilitie changed staff members multiple times during Tacoma's negotiations and many of the new staff members had no knowledge of parties' prior progress, which caused delays in the on-going negotiations.

III. PROACTIVE STEPS TAKEN BY LOCAL GOVERNMENTS TO ADDRESS SITING OF SMALL CELLS

A. Why This is Both a Concern and an Opportunity for Local Governments

As noted above, Local Governments understand the importance of broadband deployment in their communities. Robust wireless and wireline networks are essential to address issues like health care delivery, education, closing the homework gap, job development, and the ability to gather the data necessary to truly become smart communities. Unlike the Commission and the industry, whose primary goal is to see these networks deployed as quickly and at as minimal cost as necessary, local elected officials must balance this critically important goal with the hundreds of other issues they are responsible for – including, transportation, parks, public safety, water and sewer infrastructure and services, education, social services, the arts and many others.

Like industry and like the Commission, local governments have limited staff and budgets. We understand that the industry's capital budgets may be stretched, just as with local government budgets. That explains why, in a suburban community of 115,000 people like Arvada, Colorado, with significant density in the Denver – Boulder corridor, there are many parts of the City that barely get 3G coverage today. It makes it difficult to accept that the Commission is seriously

considering whether to preempt local control in order to facilitate "the promise" of 5G, when we barely have 3G today. Keep in mind that this is the situation in built out suburban communities. In rural Washington, Colorado, New Jersey, and all across rural America, it is much worse.

Problematically, when industry seeks federal restrictions on local authority, as Mobilitie has done in this proceeding and as the Commission suggests may be coming as a follow up to the PN, there is no *quid pro quo*. If the industry was approaching local governments and *promising more network deployment in specific communities*, in return for minimizing fees or speeding up application processes, these discussions might make sense. If the many requests that the wireless industry is making today for state legislative preemption of local authority was coupled with a promise that if such bills are passed, the companies would be legally bound to invest a certain percentage more next year than they did the past year in network deployment, and that a significant percentage of that increased amount would be in rural parts of each state, that would be a discussion worth having. But at this point, state or federal preemption of local authority leads to only one certain outcome – a reduction in the cost of doing business for an industry given special treatment. State preemptory laws may lead to more network deployment, but that deployment may come in another state. State and federal rules that restrict local authority could also result in only minimal increases in the speed of network deployment and significantly larger profits for shareholders. Those are not necessarily bad things for the industry or its shareholders. But for local governments, these debates, which have gone on in similar contexts with the industry for years, are only guaranteed to result in one outcome – restrictions of traditional areas of local authority with no assurance that those local authorities will see a benefit anytime in the near future.

Moreover, while these and many other Local Governments are working proactively to find ways to promote deployment, it is important to understand where the idea of installing new, stand-alone poles in the ROW fits within good land use planning principles. The short answer is nowhere. In almost every new development and redevelopment, utilities are placed underground. The only above ground facilities are street lights and traffic signal poles. Local Governments are very concerned about a proliferation of poles and associated support equipment in the ROW, and therefore we generally support collocation wherever feasible. Problematically, many of the light standards in the United States are not owned by the government. They are owned by private, investor-owned utilities and electric cooperatives. Some of these companies work well in making existing vertical infrastructure available for small cell siting. Others however, have refused to allow small cell facilities on their light poles. Where this occurs, the ability for local officials to plan properly for their communities becomes infinitely more challenging.

It is for these reasons that we will conclude by suggesting that the Commission play a more active educational and advocacy role between wireless industry, electric utilities, and State, local and Tribal governments to address these challenges. Adoption of preemptory rules that have no guaranty of additional network investment in those parts of the country that need it most will not be a helpful way to address our mutual goal of more network deployment.

B. CCUA

Since its inception, CCUA has developed model franchises, model code provisions and model agreements, as recommended documents to be used by its members to save time and resources in their work with the communications industry. The CCUA model cable franchise with Comcast has been utilized by numerous jurisdictions in Colorado and elsewhere. Working

with the model agreement from CTIA, PCIA, NATOA, NLC and NACO, the CCUA developed model code provisions for adoption by Colorado jurisdictions implementing the Commission's rules interpreting the requirements of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a)). Recognizing that small cell technology was coming, CCUA developed a model agreement for permitting small cell facilities in the ROW in January 2016. Much of the detail in that model is taken from Verizon's well documented and well received agreement with the City of San Antonio, Texas.

After Mobilitie approached Aurora, Colorado, the City took the CCUA model and incorporated into it a number of its provisions from its standard ROW permit and license document, in order to make a more specific and comprehensive document for licensing small cell facilities in the ROW. That agreement is about 90% complete. Once finalized, the Aurora document will be made generic, and distributed to other communities, to utilize in their discussions with Mobilitie. Similarly, Aurora will be completing its master license agreement with Verizon shortly, and that agreement too will be made generic for use by other CCUA jurisdictions. These model agreements, which no community is required to use, have become very helpful foundational documents, saving time and money for both the local government and the industry, in moving forward with agreements to facilitate small cell deployment.

CCUA members like Arvada and Edgewater, Colorado deserve credit for examining their codes *before* being approached by small cell companies, and developing the framework for efficiently dealing with this emerging infrastructure. When Arvada was amending its code, it specifically invited all of the providers of personal wireless services to attend its public meeting before the code revisions were drafted, in order to provide industry input. It also invited

attendance at its Planning Commission and City Council meetings where those code provisions were reviewed and ultimately approved. None of the providers, except for Verizon, attended and participated. To its credit, while not all of Verizon's suggestions for the code revisions were accepted, some were, and the collaboration between industry and government in that instance made for a better final product.

In Grand Junction, the City developed a Wireless Master Plan with a consultant (CityScape), and to implement that Plan amended the use-specific standards applicable to telecommunications in the Zoning and Development Code. This involved an approximately year-long process with several open houses to which the industry and community were invited to help develop the plan and regulations. The plan and regulations have been so far well received by the community and by the industry. Grand Junction has good working relationships with Verizon and with SBA in connection with their ongoing siting discussions. Mobilitie is a new player for the City, and the parties are working cooperatively on a license agreement.

C. Puyallup, Washington

As noted above, concurrent with Puyallup's efforts to draft code and policies specific to siting small cells in the ROW, Puyallup joined a consortium of cities in Washington dealing with the same issues, and retained outside legal counsel to help the members of the consortium through the process.[11] The new ordinance provisions will be brought forward in Puyallup for approval beginning in late March.

[11] The consortium includes the Washington jurisdictions of Bellevue, Redmond, Kent, Mountlake Terrace, Kirkland, Renton, Issaquah, Puyallup, Walla Walla, Spokane Valley, Gig Harbor, Mukilteo, Mount Vernon, Ellensburg, Richland, Bremerton, Oak Harbor, Bothell, Snohomish, Lake Stevens, Des Moines, Shoreline, Stanwood, Federal Way, and Burien .

D. Seattle

Seattle recently entered into an agreement with Comcast to fund additional staff to compensate for the increased number of permit volumes the City will need to process for their anticipated upgrade work. The City has made similar proposals available to other companies, although to date, only Verizon has indicated a willingness to consider this kind of an arrangement.

E. Tacoma

Tacoma Public Utilities has recently developed a construction standard for small cell installation on power poles. In addition, the City is in the process of developing a master pole attachment agreement specific to wireless attachments and is concurrently in the process of developing a fee schedule. Once all are complete, the City and wireless providers will be able to more efficiently and effectively process permit applications for small cell facilities in the ROW.

IV. PROACTIVE STEPS THAT CAN BE TAKEN BY THE COMMISSION

A. Work More Closely with the Intergovernmental Advisory Committee

As noted above, the Commission has appointed an Intergovernmental Advisory Committee, comprised of State, local and Tribal officials from all parts of the country, representing jurisdictions of all sizes. The IAC paper on siting wireless facilities should be a valuable source of information for the Commission, yet it was essentially ignored in the PN. In that paper, the IAC noted how the Commission can be more helpful to local governments in their siting decisions if the Commission had data on where facilities were sited and could make a database of potential locations available to all governmental entities as well as the wireless

industry.[12] The IAC also recommended efforts that can be undertaken to minimize the coverage gap,[13] and recommended four principles to guide the Commission's actions in this area.[14] We commend this work to the Commission.

B. Address Issue of Siting Small Cells on Utility Company Infrastructure

While some street light poles and electric distribution poles are owned by local governments like SCL and TPU, many are owned by private investor owned utilities and cooperatives. Of these, some entities owning this infrastructure have been quite cooperative in allowing small cells to be located on their existing vertical assets in the ROW. Others however, have refused. In Colorado for example, a rural cooperative, Sangre de Cristo Electric, informed the undersigned in late 2015 that it had no interest in allowing small cells on its existing poles. The state's largest electric utility, Public Service Company of Colorado, d/b/a Xcel Energy, has been asked by multiple wireless providers for permission to attach small cell facilities on existing street light poles, and has refused. It is our understanding that at the time of the filing of these Comments, Public Service Company is reconsidering its position. The CCUA is hopeful and cautiously optimistic that such agreements can be voluntarily finalized. There is no guaranty however, that a timely and reasonable solution will be forthcoming, and the Commission should explore whether it should mandate pole attachments for small cells as it does for wireline facilities. The Commission can also serve an important role in educating and advocating to these entities to encourage more facilities that are *not* owned and/or controlled by local governments to

[12] *See*, Note 6, *supra*., at pp. 15-16.
[13] *Id*., at p. 18.
[14] *Id*., at pp. 20-21.

be made available for wireless deployment purposes.

V. FAULTY PREMISES UNDERLYING MOBILITIE'S PETITION

A. Mobilitie's Initial Problems with its Filings were of its Own Making

We recognize that Mobilitie does not speak for the wireless industry, yet it is Mobilitie's petition that has led to this PN. Mobilitie has made great strides in attempting to work collaboratively with local government entities, since it first began expanding outside of its California footprint. However, many of its initial problems, and the delays caused as a result, were of its own making. Mobilitie created multiple subsidiaries with misleading names which made it look like it brought to prior state or federal approval to its siting applications. These entities had names like Colorado Exchange Facilities Network, LLC and Interstate Transport and Broadband. Mobilitie represented to local jurisdictions, in writing, that they were a regulated public utility, yet they had no certificated authority from the Colorado Public Utilities Commission as such.

Mobilitie initially represented to multiple Colorado jurisdictions that it had a pole attachment agreement in place, allowing it to attach its antennas to street lights owned by Public Service Company of Colorado. It did not. It represented that it had an agreement in place with the Colorado Department of Transportation to locate facilities in State-owned ROW within municipal or county boundaries. It did not. It later represented that such an agreement was "in the works," yet to date, none of the Local Governments from Colorado filing these Comments have received a copy. These kinds of representations resulted in many follow up questions seeking more specific information to back up the claims, which in turn led to delay on Mobilitie's part before it acknowledged the true status of the information being provided for local

government consideration.

In New Jersey, Mobilitie obtained a Certificate of Public Convenience and Necessity from the State's Board of Public Utilities ("BPU"), but questions were raised about the manner in which Mobilitie was seeking permission to locate facilities in various jurisdictions. After meeting with the BPU, in a letter dated December 2, 2016, Mobilitie indicated,

> Mobilitie has decided to obtain a franchise agreement under its CPCN with each jurisdiction in which it seeks to deploy facilities. Mobilitie expects to file the first group of franchise agreements for BPU approval as soon as practicable. We look forward to working with the BPU to expedite approval of these agreements. However, where Mobilitie already has approved agreements/permits in place, Mobilitie anticipates continuing the approved facility deployment while it obtains approval of a franchise agreement. The parties expended time and resources negotiating these agreements and coordinating installation of facilities, so it would be an inefficient use of resources to eliminate these arrangements entirely.

What is interesting about these representations is the attachment to the letter indicating that Mobilitie already had agreements in place with no less than New Jersey 34 municipalities and counties. This belies Mobilitie's claims that localities are delaying the process. Moreover, since that letter, we are unaware of any franchise agreement Mobilitie has proposed for additional jurisdictions in New Jersey. There is no evidence of excessive costs or procedural delays caused by local jurisdictions in connection with Mobilitie's New Jersey siting activities.

As noted above, in most places negotiations with Mobilitie are working better today than when Mobilitie first began its nationwide expansion, and the reasons for the earlier delays cannot in any sense be blamed on local regulatory processes.

B. Any Allegations of Local Government Bad Actors Where the Specific Jurisdictions are not Named in the Mobilitie Petition or in any Comments or Reply Comments, Should be Ignored by the Commission

It has become common practice in many Commission filings complaining about the alleged practices of local governments, to fail to name the specific entities being referenced. These kinds of anecdotal allegations that provide the allegedly offending party no opportunity to respond are offensive to the notions of due process, and should be ignored by the Commission.

It is important to note in Mobilitie's petition just how blatant this failure of due process is. Mobilitie acknowledges that many jurisdictions are in fact, working reasonably and collaboratively with it to promote network deployment. When commenting on jurisdictions that are doing "the right thing" Mobilitie mentions them by name.[15] Mobilitie then proceeds to allege that other localities are charging "exorbitant fees," that they "discriminate against wireless technology," and that the fees are "materially higher than what other rights of way users have been charged."[16] These alleged bad actors cannot respond, because Mobilitie fails to name them. Perhaps there is another side of the story that would portray the real facts in a different light.

Mobilitie then spends three pages of text in its Petition criticizing application fees, new pole fees, attachment fees, and percentage of revenue fees imposed by "a Minnesota locality," "a California city," "a Wisconsin city," "two Oregon cities," "one California city," "two other California cities," "a Texas locality," "an Illinois jurisdiction," "a New York locality," "localities in Oregon and Washington," "jurisdictions in California, Massachusetts, and New York, as well

[15] Mobilitie, LLC Petition for Declaratory Ruling, November 14, 2016, WT Docket No. 16-421, p. 14, naming Los Angeles and Anaheim, California; Minneapolis, Minnesota; Overland Park and Olathe, Kansas; Independence, Missouri; Newark and Union City, New Jersey; Bismarck, North Dakota; Price, Utah; and Racine and Wauwatosa, Wisconsin.
[16] *Id.*

as other jurisdictions in Oregon," "several Texas cities," and the all-inclusive "some localities."[17]

What does Mobilitie fear about giving these communities the opportunity to defend themselves against its allegations? Perhaps an explanation from these communities might actually lead to the data driven record that the Commission has expressed an interest in developing in this docket. In short, all such allegations where an accusing party fails to name the parties it is complaining about should be ignored. Notice and comment means nothing if notice to the parties whose acts are alleged to be the basis for the relief requested is not provided.

VI. CONCLUSION

The effort to deploy small cell facilities in the ROW is a relatively new phenomenon. For that reason alone, it is far too early for the Commission to consider moving toward federal, one-size-fits-all rules that preempt local authority related to managing the ROW for these facilities. Moreover, state legislatures all across the country have either adopted or are considering new legislation to address how these issues are addressed by the political subdivisions of each state. It remains to be seen what impact state legislation will have on deployment.

There are at least three other reasons that the Commission should not proceed with federal rules governing ROW access for small cells. First, the vast majority of the over 36,000 units of local governments in the United States that have been asked for permission to site these facilities are working cooperatively with the industry to accomplish the requests in a way that meets the legitimate needs of all parties. In the unlikely event that the record in this Docket includes allegations against 300 *specifically named* local governments that do not refute the charges, this would amount to less than one percent of all local governments in the nation. Such evidence

[17] *Id.*, at pp. 16-19.

would be wholly insufficient to support adoption of federal rules that preempt traditional areas of local control.

Second, and as we expect to be addressed by our national local government associations and a number of local government commenters in this Docket, the Commission has limited legal authority to act to preempt local authority and restrict the kinds and amounts of fees that can be charged of private entities that seek to use local government property for their business operations.

Third, the specific evidence the Local Governments have provided in these Comments demonstrate that the industry and local governments are working together well in those communities where small cell siting requests are being made. Where permits are not immediately granted, it often stems from the fact that an interested industry party has not followed up on preliminary inquiries. In many cases, the industry and local government is working together both on individual siting requests and on model agreements that will facilitate deployment on a broader scale. These model agreements are often effective region-wide or in large parts of a state, but there is no evidence that what works best in New Jersey will work equally as well in Washington. The bottom line is that there is no widespread national problem that is calling out for federal rules governing ROW access.

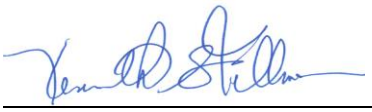
The Commission can continue to play an important role, as it has in recent years, in bringing the parties together, encouraging educational and collaborative efforts, and in doing so, we strongly urge the Commission to rely upon the expertise and advise of its Intergovernmental Advisory Committee. In addition, given the vast number of utility poles that exist in the ROW that are not owned by local governments, to the extent that the Commission does anything

proactive in this area, it should consider ways to make those non-government owned poles made available for wireless deployment. The Commission should not take further action as a follow up to this Docket related to one-size-fits-all federal rules governing access to local ROW for wireless network deployment.

Respectfully submitted this 8th day of March, 2017.

THE COLORADO COMMUNICATIONS AND UTILITY ALLIANCE, THE RAINIER COMMUNICATIONS COMMISSION, THE CITIES OF TACOMA AND SEATTLE, WASHINGTON, KING COUNTY, WASHINGTON, THE JERSEY ACCESS GROUP AND THE COLORADO MUNICIPAL LEAGUE

Kissinger & Fellman, P.C.

By: 

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